

APPEAL NO. 022582  
FILED NOVEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 12, 2002. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; (2) the claimant had disability beginning August 25, 2001, and continuing through the date of the hearing; (3) the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified his employer of the injury pursuant to Section 409.001; and (4) the carrier waived the right to contest compensability of the claimed injury because it did not dispute the injury within seven days of receiving written notice of the injury, as required by Section 409.021. The carrier appeals the injury, disability, and notice determinations on sufficiency of the evidence grounds. Additionally, the carrier appeals the hearing officer's waiver determination, asserting legal error. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury; that he timely reported his injury; and that he had disability from August 25, 2001, through the date of the hearing. Those determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In his decision, the hearing officer specifically noted that the claimant's testimony was credible and that the medical evidence supported the claimant's testimony. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record reveals that the hearing officer's injury, notice, and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse the challenged determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

With regard to the waiver issue, the carrier essentially asserts that the hearing officer erred, as a matter of law, by retroactively applying the holding in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), to this proceeding. The carrier contends that it had 60 days to contest compensability of the claimed injury, under Texas Workers' Compensation Commission (Commission) Advisories in effect at the time the claim was processed. See Texas Workers' Compensation Commission Advisory 2001-02, effective February 20, 2001; Texas Workers' Compensation Commission Advisory 2000-07, effective August 28, 2000. We note that Downs, which

requires adherence to the 7 day "pay or dispute" provisions of Section 409.021, became final on August 30, 2002. Effective September 12, 2002, the Commission updated its previous advisories, to require compliance with Downs. Texas Workers' Compensation Commission Advisory 2002-15, effective September 12, 2002. The advisory provided, "All previous Advisories issued by the Commission regarding this issue are *superseded* by this Advisory and the Supreme Court decision." (Emphasis added). The Appeals Panel has since applied Downs when the issue of carrier waiver is raised on appeal. See, e.g., Texas Workers' Compensation Commission Appeal No. 022274, decided October 17, 2002 (rejecting the carrier's argument that Downs should not be applied retroactively); Texas Workers' Compensation Commission Appeal No. 022230, decided October 21, 2002; Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002. In view of our prior decisions and the undisputed evidence that the carrier neither initiated the payment of benefits nor denied the claim within seven days after receiving written notice of the claimant's injury, we cannot conclude that the hearing officer erred in determining that the carrier waived its right to contest compensability of the claimant's injury.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Margaret L. Turner  
Appeals Judge